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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Situation in East Timor

Report of the Secretary-General

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Introduction

1. At the forty-eighth session of the Commission on Human Rights, the Chairman made a statement on 4 March 1992 announcing what had been agreed by consensus on the situation of human rights in East Timor (see E/CN.4/1992/84, para. 457). By that statement, the Commission, inter alia, encouraged the Secretary-General to continue his good offices for achieving a just, comprehensive and internationally acceptable settlement of the question of East Timor. The Commission also requested the Secretary-General to continue to follow closely the human rights situation in East Timor and to keep the Commission informed at its forty-ninth session. The present report has been prepared in response to the requests contained in the above-mentioned statement.

I. UPDATE ON THE GOOD OFFICES ACTIVITIES OF THE SECRETARY-GENERAL CONCERNING THE QUESTION OF EAST TIMOR

2. Following the appointment of Mr. S. Amos Wako in early February 1992 as the Personal Envoy of the Secretary-General to consult with the Government of Indonesia and to obtain clarifications on the tragic incident which occurred in Dili, East Timor, on 12 November 1991, Mr. Wako visited Indonesia and East Timor from 9 to 14 February 1992. He submitted his report to the Secretary-General on 19 February 1992. On 24 March 1992, the conclusions and recommendations contained in Mr. Wako's report were transmitted to the Government of Indonesia.

3. Between February and December 1992, the Secretary-General met with the Indonesian Foreign Minister, Mr. Ali Alatas, on five occasions (New York in February, September and December, Beijing in April, Jakarta in September). At every opportunity the Secretary-General discussed the human rights situation in East Timor, with particular reference to the violent and tragic incident at the Santa Cruz cemetery in Dili and its aftermath, and more recently the situation of the detained leader of FRETILIN, Mr. Jose (Xanana) Gusmão.

4. Mr. Alatas has kept the Secretary-General informed at these meetings and through letters in which he conveyed on different occasions of the reaction of his Government to the conclusions and recommendations made in the report of Mr. Wako and the steps taken by the Government vis-à-vis the 12 November 1991 incident. He has transmitted, inter alia, the full report of the National Commission of Inquiry on the Dili incident, and a copy of a statement of the Army Chief of Staff on the findings of a Military Council of Honour and on the actions taken against some members of the armed forces in connection with that incident. He has also kept the Secretary-General up-to-date on the progress made in locating persons reported missing as a consequence of the shootings at the Santa Cruz cemetery and on the trial of the civilians indicted in connection with that incident.

5. The Secretary-General has repeatedly discussed with the Indonesian Foreign Minister the possibility of dispatching a follow-up mission to Mr. Wako's first visit. While a date for such a visit has not yet been set, Indonesia in principle has accepted the idea and has promised to propose a date.

6. Since the arrest of Mr. Xanana Gusmão near Dili, on 20 November 1992, the Secretary-General has been following the situation of the detained FRETILIN leader. Soon after his arrest, he asked the Indonesian authorities to ensure that the International Committee of the Red Cross was given immediate access to the prisoner. He further discussed the matter with the Foreign Minister at their meeting in New York in December.

7. With respect to the search for an overall solution to the question of East Timor, the Secretary-General decided, as a result of his consultations at the highest level with the Governments of Indonesia and Portugal as well as the discussions conducted over several months in New York between senior United Nations officials and the respective ambassadors of the two countries, to invite the Foreign Ministers of the two countries to hold informal consultations under his auspices and without preconditions. Those informal discussions were held in New York on 26 September; they dealt with issues of format and modalities for the resumption of the talks aimed at finding a lasting solution to the question of East Timor. The first formal meeting of the two Foreign Ministers and the Secretary-General was held again in New York on 17 December 1992, at which frank and substantive discussions were held. The parties have agreed to continue their talks on 20 April 1993 in Rome under the auspices of the Secretary-General. While there has not as yet been any significant progress in these talks, the Secretary-General once again reiterates his commitment to continue to conduct his good offices in the search for a comprehensive and internationally acceptable solution to the question of East Timor.

II. ACTIONS TAKEN BY SPECIAL RAPPORTEURS AND WORKING GROUPS OF THE COMMISSION ON HUMAN RIGHTS CONCERNING EAST TIMOR

A. Action taken by the Working Group on Enforced or Involuntary Disappearances

8. Information regarding the action taken by the Working Group on Enforced or Involuntary Disappearances with regard to East Timor is described in detail in chapter II of the Working Group's report to the Commission (see E/CN.4/1993/25, paras. 278-290). The Working Group transmitted to the Government of Indonesia a total of 224 cases of disappearances related to the incident at the Santa Cruz cemetery in Dili, East Timor. Among those cases, 17 were transmitted on 10 December 1991 under the Working Group's urgent action procedure. The remaining 207 cases were transmitted by the Working Group on 15 December 1992. The Government of Indonesia informed the Working Group that 8 of the 17 persons whose cases had been transmitted on 10 December 1991 were alive and well and were residing at their respective addresses. In accordance with its methods of work, the Working Group considered these cases clarified since, after having communicated the reply of the Government to the sources, they did not contest the reply within a period of six months.

B. Action taken by the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions

9. Information regarding the action taken by the Special Rapporteur on extrajudicial, summary or arbitrary executions with regard to East Timor is

described in detail in chapter IV of the report of the Special Rapporteur to the Commission (see E/CN.4/1993/46, paras. 348-353). Paragraph 348 of the report describes the contents of the cables sent by the Special Rapporteur to the Government following the Dili incidents, calling on the authorities to investigate them, in conformity with the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions and to ensure that those identified as responsible for extrajudicial killings and other abuses would promptly be brought to justice. The Special Rapporteur also requested information about allegations to the effect that an additional number of persons, including witnesses to the events of 12 November 1991, had subsequently been executed by members of the 700 and 744 Battalions of the Hasanuddin Division of the Indonesian Army. The Government communicated to the Special Rapporteur the findings of the National Commission of Inquiry and information on the subsequent prosecution of 10 members of the armed forces. The report of the Special Rapporteur reproduces in full the conclusions of the National Commission of Inquiry.

10. The Special Rapporteur further communicated to the Government his continuing concern with regard to allegations received, according to which the composition procedures and working methods of the National Commission of Inquiry were incompatible with the above-mentioned Principles in a number of important respects, and that the nature of the criminal charges brought against those tried for their part in these killings and the length of sentence imposed could be interpreted as contributing to a climate of impunity.

C. Action taken by the Special Rapporteur on the question of torture

11. Information regarding the action taken by the Special Rapporteur on the question of torture with regard to East Timor is described in detail in chapter II of the report of the Special Rapporteur to the Commission (see E/CN.4/1993/26, paras. 270-274). Attention is also drawn in this connection to the report of the Special Rapporteur, on his visit to Indonesia and East Timor in November 1991, (E/CN.4/1992/17/Add.1), and in particular to chapter III of the report, entitled "Visit to East Timor".

12. During 1992, the Special Rapporteur transmitted to the Government information concerning several persons who were allegedly subjected to torture in East Timor following the Dili incidents. In its reply, the Government affirmed that some of the persons mentioned had never been detained or tortured, and others had been detained and later released, but had not been tortured. The Special Rapporteur also sent to the Government two urgent appeals on behalf of Xanana Gusmão who was arrested on 20 November 1992, and on behalf of several other people arrested during November 1992 and kept in incommunicado detention since their arrest. With regard to Xanana Gusmão, the Government replied that he had been treated in a manner consistent with humanitarian considerations in accordance with Indonesian law. With regard to the second urgent appeal, no reply has been received.

ANNEXES

Annex I

INFORMATION PROVIDED BY THE INDONESIAN GOVERNMENT

Note verbale dated 29 May 1992 from the Permanent Representative of Indonesia to the United Nations addressed to the Secretary-General

The above-mentioned note verbale, including, inter-alia, annexes concerning the advance report of the National Commission of Inquiry into the 12 November 1991 incident in Dili, the follow-up to that report and the findings of the Military Honour Council on that incident, and action taken, is contained in General Assembly document A/47/240, dated 3 June 1992, which is available for consultation.

Note verbale dated 30 June 1992 from the Permanent Mission of the Republic of Indonesia to the United Nations Office at Geneva addressed to the Centre for Human Rights communicating information concerning the trials of a number of military personnel in connection with the incident of 12 November 1991 in Dili

1. Following the findings and recommendations of the Military Honorary Council (MHC) announced by the Army Chief of Staff, 10 military personnel were brought before the Military Court in Denpasar, Bali from 29 May to 5 June 1992. They were charged under the Military Penal Law for committing grave infringements of military ethics and violating military discipline, in particular disobeying orders. All of the 10 persons were found guilty as charged and sentenced to imprisonment ranging from 8 to 18 months. The relevant part of the Press Statement of the Army Chief of Staff dated 26 February 1992 announcing the result of the MHC as contained in document E/CN.4/1992/79, the list of the military personnel who were brought to trials and their respective sentences are enclosed herewith.

2. The trials took place in Denpasar instead of Dili due to the fact that all of the defendants had been transferred to the Udayana Military Command, Bali.

3. From the beginning, as in the case of the trials of the civilians in the incident, the military trial proceedings were open to the public and have been attended by foreign observers.

"LIST OF 10 MILITARY PERSONNEL BEING TRIED
FROM 29 MAY TO 5 JUNE 1992

1. First Corporal L.P. Martin Alau: Sentenced to 17 months imprisonment;

2. Private Second Class Alfonso de Jesus: Sentenced to 8 months of imprisonment;

3. Private Second Class Matheus Maya: Sentenced to 8 months of imprisonment;

4. Master Sergeant Udin Syukur: Sentenced to 18 months of imprisonment;

5. Master Sergeant P. Saul Meda: Sentenced to 12 months of imprisonment;

6. Master Sergeant Aloysius Rani: Sentenced to 14 months of imprisonment;

7. Second Lieutenant Mursanib: Sentenced to 14 months of imprisonment

8. Second Lieutenant John H. Aritonang: Sentenced to 12 months of imprisonment;

9. Second Lieutenant Edi Sunaryo: Sentenced to 12 months of imprisonment;

10. Second Lieutenant Johanes A. Penpada: Sentenced to 8 months of imprisonment."

Letter dated 4 January 1993 from the Permanent Representative of the Republic of Indonesia to the United Nations addressed to the Secretary-General transmitting to him a letter dated 28 November 1992 addressed to him by the Foreign Minister of Indonesia

"Thank you for your letter of 20 November 1992, in which you inquired about the recent arrest of Mr. Xanana Gusmão by the Indonesian security forces.

"I should like to confirm that Mr. Xanana Gusmão was indeed apprehended in Dili on the morning of 20 November by the Indonesian security apparatus who were aided by information and cooperation from the local population.

"At the present moment he is in safe custody and is being questioned in preparation for his court trial on the basis of the Indonesian criminal code and law on criminal procedures. I should like to assure you that he will be tried in strict accordance with those laws, i.e. in open, public court, and he will be provided with full legal assistance. I should also like to personally assure you of his good health and that he is not being ill-treated in any way.

"As regards access to him by the International Committee of the Red Cross, I am pleased to inform you that such access will be granted in due time in accordance with existing regulations.

(Signed): Ali Alatas"
[Foreign Minister]

Annex II

INFORMATION PROVIDED BY THE PORTUGUESE GOVERNMENT

Note verbale dated 5 June 1992 from the Permanent Representative of Portugal to the United Nations addressed to the Secretary-General transmitting a statement of the Portuguese Government issued in Lisbon on 27 May 1992 on the Trial and Sentencing of East Timorese in Jakarta and Dili

"The Portuguese Government draws the attention of the international community to the trials of East Timorese arrested during the Santa Cruz massacre in November 1991. These trials are taking place without the minimum requirements of impartiality and legal defence. Two of the defendants have already been sentenced with heavy prison terms. There is a sharp contrast between the sentencing of the victims - who have been accused of engaging in non-violent political activity in favour of the internationally recognized rights of the East Timorese people - and the fact that there was no significant punishment at all for the officers responsible for the terrible violence.

"Indonesia is accused of bad faith as it has acted in flagrant violation of the provisions of the declaration adopted by the United Nations Commission on Human Rights in March 1992, which it had accepted and subscribed to. In this, Indonesia has shown an arrogant disrespect for the universal condemnation that followed the massacre."

Letter dated 26 June 1992 from the Permanent Representative of Portugal to the United Nations addressed to the Secretary-General transmitting a statement by the Portuguese Government on East Timor, issued in Lisbon on 23 June 1992

"Recent sentences against East Timorese civilians strike again an ominous contrast with the leniency shown towards the Indonesian military brought to trial for their involvement in the 12 November massacre.

"Two more East Timorese civilians, whose trials in Dili have now finished, have been given heavy prison sentences for non-violent activities in connection with the massacre committed on 12 November 1991 by the Indonesian military in the capital of the Non-Self-Governing Territory of East Timor, illegally occupied by Indonesia.

"Juvêncio de Jesus Martins and Felismino da Silva Pereira were condemned respectively to six years and five years and eight months in prison, for their alleged participation in organizing the demonstration that was, on that occasion, barbarously repressed by Indonesian troops, causing heavy human losses, as was widely reported. In the meantime, and according to what has been publicly disclosed, several low-ranking Indonesian military (two second lieutenants, one sergeant and three privates) - these three, curiously enough, all of East Timorese origin, were court-martialled and given sentences of between 8 and 18 months' imprisonment. The charges brought against them (disobeying orders and inflicting wounds with a bayonet) are clear indicators that a serious investigation into those actually responsible for an atrocity that prompted worldwide indignation is still far from sight. Who ordered

the shooting at Santa Cruz cemetery? Who are those accountable for so many killed and wounded? These questions remain unanswered in spite of all the promises subsequently made by the Indonesian authorities.

"Indonesia committed itself to identifying and punishing all those deemed responsible for that tragedy. So far its understanding of that commitment has led it to inflict heavy penalties such as those referred to above upon East Timorese, indicted not for any violent activities, but for organizing peaceful demonstrations. There is a shocking and unacceptable discrepancy between these penalties and those imposed on the military (small fry as they may be) who took part in that terrible brutality.

"Indonesia continues to blatantly disregard the commitments it gave in subscribing to the consensus agreed upon by the United Nations Commission on Human Rights, as announced in the declaration of its Chairman on 4 March 1992.

"Not only has the punishment of the authors of that carnage been translated into ludicrous measures: those civilians, whose release without delay was requested by the Commission on Human Rights, have been sentenced.

"This shows that the Indonesian Government acted with complete cynicism in the Commission's dealings with this issue. It also shows Indonesia's contempt for human rights.

"Portugal expresses its firmest condemnation of these actions and hopes that the international community will draw from them the appropriate conclusions. Portugal affirms also its full solidarity with all those East Timorese who have been sentenced to unjust and illegitimate penalties aimed at repressing their struggle to ensure that the people of East Timor have the freedom to choose their political future."

Letter dated 21 July 1992 from the Permanent Representative of Portugal to the United Nations addressed to the Secretary-General transmitting a statement by the spokesman of the Ministry of Foreign Affairs of Portugal on the sentencing to life imprisonment of a Timorese in Dili, issued in Lisbon on 2 July 1992

"Portugal has repeatedly denounced the steady cynicism and contempt with which Indonesia defies international criticism and démarches. The Jakarta authorities continue to offer a deplorable image in the trials and sentencing of the Timorese civilians arrested in the wake of the massacre committed on 12 November 1992 in Santa Cruz cemetery.

"It has now been the turn of Gregorio da Cunha Saldanha to be sentenced to life imprisonment, accused of having been the main instigator and organizer of the demonstration held on that day. A few days ago Francisco Miranda Branco was given 15 years. Neither of them was charged with violence, and both should therefore, like the other

civilian demonstrators who have received long prison sentences, have been released without delay in accordance with the United Nations High Commissioner for Refugees consensus statement to which Indonesia subscribed.

"The iniquitous and unlawful sentence handed down to Gregorio da Cunha Saldanha shows Indonesia's growing contempt for the international community. It is clear proof that the promises it made with the aim of lessening the indignation caused by the massacre cannot be trusted, and that the Indonesian authorities have no intention whatsoever of respecting the commitments they gave before the Commission on Human Rights.

"Indonesian repression of the survivors of the Santa Cruz massacre remains merciless, whilst the soldiers actually responsible for the shooting have been given token sentences, mainly on charges of disobeying orders. The promised investigations into the circumstances surrounding the massacre, and punishment of those responsible, have produced this grotesque result, which reveals a total lack of good faith.

"Indonesia's willingness to go back on its own word cannot be ignored by those who hitherto have sought to justify their own acceptance of the Jakarta Government's promises and the cooperative attitude it has been demonstrating since the Santa Cruz massacre."

Note verbale dated 20 November 1992 from the Permanent Mission of Portugal to the United Nations Office at Geneva addressed to the Centre for Human Rights transmitting a communiqué from the Portuguese Government on the occasion of the anniversary of the Santa Cruz massacre of 12 November 1991

"The brutal massacre of Timorese civilians at the hands of Indonesian troops exactly one year ago today represented, in so far as the outside world was able to judge, a new development concerning the question of East Timor.

"As from 12 November all that could be maintained by the illegal occupants of the Territory was that the denunciations that had been regularly made - not only by Portugal but also by other countries, organizations and authorities - concerning the unbearable situation in the Territory were pure calumny and groundless accusations. Finally, at the end of more than 15 years' occupation, during which everything was done to erect a wall of isolation and silence, the stark reality of unbridled repression revealed its true face in the light of day. The occupation of East Timor, with the thousands of victims that it has brought in its wake, has not prevented or frightened the Timorese, especially the youngest of them, from demonstrating in support of their rights and basic freedoms. With the passing of time, the occupation has not acquired a firmer basis or come to be accepted; on the contrary, the determination of those subjected to it has but grown stronger. Santa Cruz may be said to have alerted the international community to the continuing tragedy of a small people, invaded and subjugated by force,

against whom an intolerable act has been committed which denies all the major principles considered mandatory and universal in these last years of the twentieth century.

"The tragic sacrifice of so great a number of young people has then not been in vain. It has stirred many sluggish consciences, revealed inconsistencies and hypocrisies and created the conditions for setting in train a whole series of political and diplomatic actions that have unquestionably placed the question of East Timor in a different perspective. The new positions adopted by the European Communities on the question, the interruption of United States military aid to Indonesia, the deliberations within the United Nations Commission on Human Rights and the spontaneous demonstrations of solidarity witnessed in many countries show that the matter is now at last coming to the attention of world public opinion in a context conducive to ensuring respect for the fundamental rights of the Timorese people, which must be given practical expression.

"Unfortunately, it must also be realized that this growing awareness on the part of the international community regarding the tragic question of East Timor has not had satisfactory repercussions on the situation persisting in the Territory.

"It must be stressed that Indonesia has still not shown the slightest intention to put an end to the persistent violations of human rights in East Timor, as is demonstrated by the following facts: the grotesque contrast between the token penalties imposed on those responsible for the killings at Santa Cruz cemetery and the heavy prison sentences, including a sentence of life imprisonment, meted out to the surviving Timorese civilians, who were not charged with acts of violence; the prohibitions on access to the Territory by human rights organizations that have requested to go there; the scandalous statements by a so-called 'governor' who has said that it would have been desirable for all the demonstrators to have been killed; and the recent news concerning a wave of arrests affecting hundreds of people.

"The Portuguese Government once again draws the attention of the international community to this persistent situation which is a real challenge to purportedly universal values and principles, with regard to both peoples' rights and human rights. Measures must be taken to avert at all costs any repetition of the violence that occurred on 12 November 1991 in East Timor, attesting to a confrontation which has its roots in the denial of such rights. Recent history proves that, with time, illegitimate situations imposed by force become not more firmly established but, on the contrary, more precarious.

"It is therefore imperative for a negotiated, peaceful solution to be found that can lead to the conclusion of the process of decolonization of the Territory with full respect for its cultural and religious identity and the legitimate rights of its people, including the right of political self-determination, in accordance with the Charter of the United Nations and the resolutions already adopted by the General Assembly and the Security Council on the problem."

Note verbale dated 25 November 1992 from the Permanent Mission of Portugal to the United Nations Office at Geneva addressed to the Centre for Human Rights transmitting a communiqué of 20 November 1992 on the detention of Xanana Gusmão

"According to very recent news, the Indonesian authorities, which are illegally occupying the Territory of East Timor, captured the leader of the Timorese resistance, Xanana Gusmão, in Dili this morning.

"Xanana Gusmão, by virtue of his courage and steadfastness in the constant struggle waged in defiance of great dangers and in adverse circumstances, symbolizes the determination of the people of East Timor to oppose the brutal occupation of Indonesia.

"The Portuguese Government calls on the international community to act as swiftly as possible to secure the release of Xanana Gusmão and obtain guarantees as to his physical well-being, while ensuring that his rights as a human being are fully respected by the Indonesian authorities.

"Portugal reaffirms its determination to continue its action to defend the rights and freedoms of the people of East Timor, including the right of political self-determination, which has always been refused it and without which it will not be possible to put an end to the intolerable situation that persists in East Timor."

Letter dated 2 December 1992 from the Permanent Representative of Portugal to the United Nations addressed to the Secretary-General transmitting a statement by the spokesman for the Ministry of Foreign Affairs of Portugal, following the appearance of Xanana Gusmão in a film broadcast by Indonesian television

"In view of the gross inconsistency of the recent remarks made on Indonesian television by Xanana Gusmão taking into account the positions he has assumed over many years of resistance to the occupation of East Timor, we regard with the utmost concern his current situation as everything points to the belief that he is surely being the victim of threats and aggression to his person, his family and his companions.

"The Portuguese Government, therefore, appeals to the United Nations, the international community and, in particular, to the International Committee of the Red Cross that they seek to bring about an immediate end to a situation that represents a violation of the most basic human rights."

Note verbale dated 1 February 1992 from the Permanent Representative of Portugal to the United Nations Office at Geneva, addressed to the Centre for Human Rights, transmitting an Aide-mémoire on the situation in East Timor, dated 11 August 1992

The contents of the above-mentioned aide-mémoire are summarized in document E/CN.4/Sub.2/1992/SR.19 of 21 August 1992, paragraphs 72 to 77, which is available for consultation.

Note verbale dated 2 February 1993 from the Permanent Mission of Portugal to the United Nations Office at Geneva addressed to the Centre for Human Rights transmitting a Communiqué of 30 January 1993 on the trial of Xanana Gusmão, leader of the Timorese resistance:

"Various Indonesian authorities have issued a number of ambiguous and inconsistent statements regarding the trial of Xanana Gusmão, the leader of the Timorese resistance. It has now been announced that trial will begin on 1 February in Dili, capital of East Timor, a Non-Self-Governing Territory under Portuguese administration, under illegal occupation by Indonesia.

"The Portuguese Government draws attention to the fact that Xanana Gusmão is to be tried by an occupying power which, since its military invasion of the Territory, has used brutal repression and massive violation of the most fundamental human rights in its attempts to suppress all opposition to its illegal rule. That rule has been imposed in defiance not only of the principles and fundamentals of international law and the Charter of the United Nations but also in direct breach of resolutions on East Timor adopted by the General Assembly and the Security Council. Xanana Gusmão is now on trial for resisting this forcible imposition of a political situation, which ignores entirely the right to self-determination of the people of East Timor. It is the Indonesian regime which, in putting Xanana Gusmão on trial, is acting outside international law, since it lacks the legal, political and moral authority to do so.

"East Timor is a Territory under military occupation, and Indonesia is not recognized internationally as having any lawful authority there. Under these circumstances the trial of Xanana Gusmão, and should they be brought to trial, of any other Timorese currently held by the authorities, falls fully within the relevant provisions of international humanitarian law, in particular the Geneva Convention of 12 August 1949 relative to the protection of civilian persons in time of war. Indonesia is formally bound by this Convention.

"The Convention applies irrespective of the legality or otherwise of Indonesia's occupation of the Territory. Under the terms of the Geneva Convention relative to the protection of civilian persons in time of war (which applies to East Timor by virtue of its article 2), Xanana Gusmão is in particular entitled to be tried in accordance with the law in force at the moment of occupation; the accused is entitled to be judged impartially and after a fair trial, to be represented by the advocate of his choice who may act without hindrance in the preparation and presentation of the defence (including the freedom to visit the accused); the accused is entitled to be informed immediately of the charges he faces; he is entitled to the services of an interpreter; he must not be subjected to physical or psychological pressure and he is not obliged to confess his guilt. These are just some of his more pertinent rights, apart from the respect of human life and physical integrity, his personal honour and personal dignity, his right not to be subjected to torture, ill-treatment, degrading treatment or any other form of physical or psychological coercion.

"It has nevertheless become apparent that Indonesia intends to apply its own penal law, including its catch-all anti-subversion law, which Indonesia agreed before the United Nations Commission on Human Rights to repeal. The prisoner has been kept incommunicado, except for a single visit by the International Committee of the Red Cross and a number of 'interviews' in front of television cameras for propaganda purposes. It seems that he has not been allowed a free choice of advocate: an official defence attorney has been appointed, who is unable to speak any language familiar to the prisoner and is reputed to have had professional dealings with the police. The authorities have produced a number of conflicting statements on the charges the prisoner may face, although no one has been allowed to communicate with Xanana Gusmão, he has already been forced to make public confession under circumstances degrading to his personal honour and dignity.

"Portugal protests vehemently against the trial of Xanana Gusmão which, apart from being unlawful, is clearly going to be carried out under circumstances offering no guarantees of impartiality and objectivity. There is a risk that the trial will develop into a sombre farce whose aim is to persuade world opinion that Indonesia's forcible annexation of East Timor is now a fait accompli, sacrificing the legitimate right to self-determination of the Timorese people."

Annex III

MATERIAL PROVIDED BY NON-GOVERNMENTAL SOURCES

During the period covered by the present report (March 1992 to January 1993) the Secretariat continued to receive a large amount of material concerning the situation in East Timor. Such material was provided by international non-governmental organizations, Indonesian human rights groups and groups concerned specifically with human rights in East Timor, based in most cases in Portugal. The Secretariat also received dozens of petitions from people in different countries, calling for the release of political prisoners in East Timor, and in particular the release of Xanana Gusmão.

The following is a summary of the allegations contained in the above-mentioned information relating to the period covered by the present report. It should be noted that, among the above-mentioned organizations and groups which have provided the Secretariat with pertinent material during that period, Amnesty International is the only organization to have done so in a consistent and regular manner. The summary was therefore prepared principally on the basis of material provided by that organization. Nevertheless, to the extent that other organizations or groups provided material which is not mentioned in any of the Amnesty International publications, it is reflected in parts B and C of the summary.

A. Information received from Amnesty International, a non-governmental organization in consultative status (category II)

Amnesty International provided, during the period covered by the present report, the following documents: "Indonesia/East Timor: Fernando de Araujo - Prisoner of Conscience, May 1992"; "Indonesia/East Timor: The Suppression of Dissent, July 1992" and "East Timor: In Accordance with the Law - Statement before the United Nations Special Committee on Decolonization, July 1992". In addition, between 23 November and 18 December 1992, the Secretariat received nine publications entitled "Amnesty International - Urgent Action", containing a list of people who were allegedly arrested and/or disappeared in the wake of the arrest of Xanana Gusmão. The following summary was prepared on the basis of information contained in the above-mentioned reports and publications.

It was reported in the statement made by Amnesty International to the United Nations Special Committee on Decolonization in July 1992 that in the aftermath of the Dili incidents, military intimidation of the East Timorese population increased; many suspected political activists including young people and Catholic priests, were subjected to imprisonment, death threats and beatings. Households suspected of harbouring pro-independence activists were subjected to searches and their members were threatened with violence by the military. By way of example, it was reported that in March 1992, three persons, Felismina dos Santos Conceiçao, Alfonso Rangel and Amarao de Araujo were convicted under Article 122 of the Criminal Code of "acting against the national interest" and were sentenced to prison terms of between two and five years. The three were accused of stealing four "secret" military documents - which were, according to Amnesty International, reports of human rights

violations - and "sending them to members of the resistance movements overseas" (who, according to the source, were members of a Portuguese parliamentary delegation).

In May 1992, more details were given by Amnesty International on some of the East Timorese civilians arrested following the Dili incidents:

- on 25 May 1992, Fernando de Araujo was sentenced to nine years' imprisonment for "undermining the Indonesian Government and disgracing the nation in the eyes of the international community". Araujo was described as a founder member and leader of "Renetil", a student organization which, according to the source, peacefully opposes the integration of East Timor with Indonesia. He was charged with organizing a protest demonstration in Jakarta, on 19 November 1991, against the killings and beatings at the Santa Cruz Cemetery in Dili;

- on 26 May 1992, Joao Freitas da Camara was convicted, by a court in Jakarta, of subversion and sentenced to 10 years' imprisonment, for organizing a protest against the Santa Cruz killings;

- Domingos Barreto and Vingito da Silva Guterres, accused of publicly insulting the Indonesian Government during the protest in Jakarta, were also convicted in May and sentenced to prison terms of six months and four and a half years, respectively. They had been charged under articles 154 and 155 of the Criminal Code, which define "expressing feelings of hostility, hatred or contempt toward the Indonesian Government" as a criminal offence;

- in addition to the four persons mentioned above, who were convicted of subversion or of other offenses in connection with the Santa Cruz killings, the source provided a list of persons still detained in Jakarta and in East Timor, in connection with the same incidents. In Jakarta, one person was charged with publicly expressing hostility toward the Government and was still being tried, and 17 others were listed as "conditionally released but current circumstances unclear". In East Timor, two were charged with subversion and six with publicly expressing hostility toward the Government. Their verdict and sentence were not known at the time of the publication (May 1992). Twenty-four others were listed as "reportedly confined outside Dili and receiving 'mental guidance'".

According to Amnesty International, reports received from East Timor in June 1992 indicated that the military investigation into the fate of those who remained "disappeared" after the Santa Cruz killings, made little progress in locating the 90 officially acknowledged victims of "disappearance". It was further reported that residents had said that the bodies of some persons were buried outside Dili, and that they believed the army was reluctant to open the graves because the number of dead was much higher than that officially announced.

As regards the practice of torture and ill-treatment of alleged political opponents, Amnesty International reported in July 1992 that a pattern of short-term detention, torture and ill-treatment of such persons continued to

be reported in East Timor. Suspected political activists, including Catholic priests, had allegedly been made to strip naked and were beaten and kicked; many had allegedly been subjected to death threats.

In June 1992 Francisco Miranda Branco and Gregorio da Cunha Saldanha, who had been charged in Dili with subversion for organizing the funeral procession which preceded the Santa Cruz killings, were sentenced to 15 years' imprisonment and for life imprisonment, respectively. It was further reported that by June 1992 three of the persons detained and charged with "public expression of hatred of the Government" had been sentenced to prison terms ranging from six months to almost seven years.

On 23 November 1992, Amnesty International issued two "Urgent Action" publications. One of these documents listed 14 persons who were allegedly among hundreds of East Timorese detained by Indonesian military and police forces during the period preceding the issuing of the document. It was reported that many of those arrested as suspected opponents of Indonesian rule prior to the anniversary of the November 1991 Santa Cruz killings were released after interrogation, but that the 14 people named in the document, and possibly many others, were reported to remain in custody and the source expressed fear that they may be subjected to torture and ill-treatment. According to Amnesty International such fears were based on reports that Indonesian security forces routinely denied political detainees access to a lawyer, in contravention of Indonesia's own Code of Criminal Procedure (KUHAP, articles 54 and 55), and that representatives of the International Committee of the Red Cross (ICRC) were consistently denied access to detention centres until interrogation had been completed.

The other "Urgent Actions" publication issued on 23 November 1992 as well as five consecutive "Urgent Action" publications issued on 24, 26 and 30 November and 4 and 10 December 1992, dealt with the arrest of Xanana Gusmão and of several other people arrested at the same time or shortly afterwards. Those arrested were still denied visits by the ICRC and close relatives of Xanana Gusmão, including his sister, her husband and two of their children and members of the Araujo family, in whose residence Gusmão had been arrested. On 4 December 1992, Amnesty International alleged that Gusmão and at least 20 of his close associates and relatives arrested since 20 November 1992 (the day of his arrest) remained in incommunicado detention and that at least one of those detained, Jorge Manuel Araujo Serrano, was reported to have been tortured to death while in custody. The source therefore reiterated its fears that Gusmão and the other detainees had also been tortured or ill-treated while under interrogation. It was also alleged that at least two of the women held in Dili, possibly Ligia de Araujo, aged 22, and Regina Conceiçao Araujo Serrano, aged 18, had been raped by Indonesian officers in front of their relatives on 29 November. It was further reported that "according to unnamed sources within the police headquarters" [in Denpasar, Bali], Xanana Gusmão "has been beaten and tortured with electrical shocks and subjected to severe psychological pressure while under interrogation".

On 10 December 1992 it was reported that the Indonesian Government had permitted representatives of the ICRC to visit Xanana Gusmão at an unspecified location in Jakarta on 7 December 1992; but that at least 39 others, and possibly many more, detained in East Timor since early November 1992, were still denied visits by the ICRC and are being held in incommunicado detention.

On 4 December 1992 Amnesty International published a list of 14 persons who were reported to have "disappeared" after being arrested by Indonesian security forces in early November 1992. Five others, also arrested in mid-November, were believed to be detained in Dili, but their exact whereabouts remained unknown and there were fears that they may have "disappeared".

On 18 December 1992, Amnesty International published a list of 25 people arrested since early November 1992 in Manatuto and Same Districts and in Dili. Their precise whereabouts were not known, but they were believed to be detained in military detention centres in the towns of Baucau, Same and Dili. It was alleged that they were at risk of torture and ill-treatment. The source added that there had also been unconfirmed reports that 17 relatives of an East Timorese activist living in Portugal were arrested on 25 November 1992 in Dili, and fears were expressed that they too may be at risk of torture.

B. Information received from the International Commission of Jurists (ICJ), a non-governmental organization in consultative status (category II)

The International Commission of Jurists (ICJ) provided the Secretariat with a detailed report on the trials in Dili and Jakarta, entitled "Tragedy in East Timor", dated October 1992. The ICJ sent observers to the trials in Dili and Jakarta. As regards the trials in Jakarta, the ICJ observer concluded that they were basically conducted in an appropriate manner and, with one critical exception, in accordance with the due process provisions of the KUHAP. "There was no direct evidence of governmental or military interference in the proceedings. It is difficult, therefore to assess the impartiality of the judges." ... "The patina of judicial due process cannot, however, be used to obscure the grim reality of the consequences of raising a voice in dissent in Indonesia with respect to the sensitive matter of East Timor. It must be emphasized that the very existence of the subversion and so-called hate-sowing laws, both of which are relics from the days of colonial oppression and less politically stable times, represents a serious violation of basic human rights...The trials and the guilty verdicts, taken together, however, reveal Indonesia's compulsion to eliminate dissent with respect to East Timor, whether that dissent is expressed to other Indonesians or to the outside world, even at the expense of the basic rights of its own citizens".

With regard to the Dili trials, the ICJ reported that one of their observers had difficulty in obtaining permission to travel to East Timor, and that another observer had his visa application denied on the basis that by the time the authorities had dealt with it, the trials would have concluded. The ICJ concluded that, in the experience of its two observers, the Government of Indonesia had not complied with the spirit or the letter of the statement made at the United Nations Commission on Human Rights by the Chairman on 5 March 1992 which, inter alia, urged the Indonesian authorities to "facilitate access to East Timor for additional humanitarian organizations and

for human rights organizations". After comparing the sentences meted out to members of the military forces involved in the killings, on the one hand, and the East Timorese citizens, on the other, the report noted that "the charges brought against the military officers and personnel subsequent to the 12 November incident are patently inappropriate to the crimes involved. Moreover, the relative lack of seriousness of the charges, not to mention the sentences, does not bear any comparison with the charges and sentences brought against the demonstrators and those who organized the demonstrations. It may fairly be said that 'justice' has been turned on its head in this case".

In conclusion, the report noted the following:

"Indonesia, as a Member State of the United Nations, has pledged to achieve in cooperation with the United Nations, the promotion of universal respect and observance of human rights and fundamental freedoms.

"Indonesia has breached article 19 of the Universal Declaration of Human Rights in permitting prosecutions under the Anti-Subversion Law against defendants whose crime involved no element of violence, but who held opinions and who sought to express those opinions as well as to receive and impart information and ideas in relation to the self-determination of East Timor.

"Indonesia has also breached article 20 of the Universal Declaration of Human Rights in permitting prosecutions under the Anti-Subversion Law against persons who sought to arrange a peaceful demonstration and who engaged in meeting and planning for those demonstrations. The fact that the demonstrations produced some element of violence (in Dili, the violence was clearly, on the evidence available, offered on the part of the military) does not appear to have been the fault nor the intention of the defendants."

C. Information received from other non-governmental sources

Asia Watch published a report entitled "East Timor: the Courts Martial", dated 23 June 1992, which described in detail the trials of nine soldiers and one policeman, by military or police courts in Bali, for their role in the killings at the Santa Cruz Cemetery. In its conclusions, the Report affirmed, inter alia, the following: "The courts martial help give the Indonesian Government an appearance of even-handedness ... But justice is not the same as even-handedness. The fact that any investigation and any courts martial at all took place is a step forward for the Indonesian Government and should be recognized as such, but there has been no real accounting for the deaths and disappearance that took place on 12 November 1992. None of those convicted in late May and early June started the shooting: none organized the disposal of bodies or planned the cover-up, which stressed the factor of spontaneity. It is difficult to avoid the conclusion that the courts martial were stage-managed for international consumption, particularly when documents which might shed further light on events in Dili, such as the full report of the National Commission of Inquiry and the full report of the Council of Military Honour, have been kept under wraps." The report contained two appendices. The first lists the military personnel who were put on trial

and their sentences, ranging from 8 to 18 months' imprisonment; and the second lists East Timorese civilians who were put on trial and the sentence requested by the prosecution (when available) and the sentences given to those already sentenced (7 out of 18), ranging in most of the cases from two and a half years' to life imprisonment (only in one case was the defendant given a prison sentence of less than one year).

The "Indonesian Human Rights Forum", a newsletter prepared by the Indonesian Legal Aid Foundation (YLBHI), reported in its No. 4/1992, issue of April - June 1992, about the trials in Dili of eight youths charged with subversion for having masterminded the demonstration in Santa Cruz Cemetery on 12 November 1991, and the trials in Jakarta of Joao de Freitas Camara and Fernando de Araujo. Some of the accused were represented by a team of lawyers of the Legal Aid Foundation and the Indonesian National Bar Association (YLBHI-IKADIN). The newsletter reported the following: "... All lawyers on the legal team hold positions of senior advocates which allow them each to practice in any Indonesian province. Despite the legitimacy of the legal team to present the eight East Timorese charged with subversion in a Dili court, the Dili judge claimed the YLBHI-IKADIN team did not have the authority based on their procedural failure to secure permission from the High Court of the Eastern Provinces in Kupang, West Timor, to practice in Dili. ... The Dili judge refused to allow the team to represent the defendants on grounds of procedural flaws and instead appointed a Dili lawyer ... to represent the defendants. The defendants were not in agreement with this directive of the Dili judge. By Indonesian Criminal Procedural Code, a defendant has the right to choose his representation. However, given that the Dili judge refused to allow the YLBHI-IKADIN team to practice, the judge claimed that by law a substitute lawyer must be appointed whether or not the defendants agreed with the appointed lawyer. Clearly, the refusal of the Dili judge to allow the YLBHI-IKADIN team to represent the defendants violate the rights of the defendants by Criminal Procedural Code, article No. 55 (KUHAP) which states, "... the defendant has the right to choose his legal advisor". In protest at the decision of the judge which violated the rights of the defendants, the Director of YLBHI requested that the Indonesian Supreme Court correct the error of the Dili judge. The Supreme Court received the request of YLBHI and sent a telegram directing the judge of the Dili Court to honour the YLBHI-IKADIN team and allow them to represent the defendants in Dili court in East Timor ..."

On 16 May 1992 an organization called "Peace is possible in East Timor - Oecumenical Association", based in Lisbon, Portugal, provided the Secretariat with a list of 234 persons who have allegedly disappeared following the November 1991 Santa Cruz killings. With regard to 52 of these people, the source reported that there were contradictory indications as to whether they were dead or disappeared.